

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LINDA DUNCAN

Plaintiff,

v.

CAL-WESTERN RECONVEYANCE
CORPORATION, et al.,

Defendants.

3:12-cv-0094-LRH-VPC

ORDER

Before the court is plaintiff Linda Duncan's ("Duncan") motion for default judgment against defendant the Bank of New York Mellon as trustee under the pooling and servicing agreement series 04-32 ("Mellon"). Doc. #15.¹ Defendant Mellon filed an opposition and counter-motion to set-aside the clerk's entry of default (Doc. #13). Doc. #18.

I. Facts and Background

In January 2004, Duncan purchased real property through a mortgage note and deed of trust executed by non-party National City Mortgage Company ("National City"). In February 2005, National City assigned the mortgage note and deed of trust to Mellon under the pooling and servicing agreement series 04-32. Doc. #18, Exhibit B. The assignment of the deed of trust was subsequently recorded in Lyon County, Nevada.

¹ Refers to the court's docket number.

1 Duncan eventually defaulted on the property and defendants initiated non-judicial
2 foreclosure proceedings. The property was eventually sold at a trustee's sale on April 9, 2010.
3 Doc. #18, Exhibit G.

4 In August 2011, Mellon filed a complaint for unlawful detainer against Duncan in state
5 court for failure to quit the property. While that action was ongoing, Duncan initiated the present
6 separate action and served the summons and complaint on a company paralegal on January 30,
7 2012. The clerk of court entered a clerk's default against Mellon on April 13, 2012. Doc. #13.
8 Thereafter, Duncan filed the present motion for a default judgment (Doc. #15) to which Mellon
9 filed the present counter-motion to set-aside default (Doc. #18).

10 **II. Discussion**

11 Pursuant to Rule 55 of the Federal Rules of Civil Procedure, the court may set-aside an
12 entry of default for good cause. FED. R. CIV. P. 55(c).

13 The court has reviewed the documents and pleadings on file in this matter and finds that
14 good cause exists to set-aside the clerk's entry of default. First, the court is suspicious of Duncan's
15 service of the summons and complaint in this action as Duncan already had the service information
16 for Mellon's counsel as she was involved in the unlawful detainer action in state court but served
17 the summons and complaint on a paralegal at a Mellon office. Second, the court recognizes that
18 Mellon appeared in this action as soon as it recognized that it was a defendant in this action despite
19 Duncan's refusal to disclose the present action to Mellon's counsel. Finally, the court notes that
20 there is a strong policy in favor of resolution of disputes on the merits, rather than judgment by
21 default. *See Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Accordingly, the court shall deny
22 Duncan's motion for default judgment, grant Mellon's counter-motion, and set-aside the clerk's
23 entry of default.

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1 IT IS THEREFORE ORDERED that plaintiff's motion for default judgment (Doc. #15) is
2 DENIED.

3 IT IS FURTHER ORDERED that defendant's counter-motion to set-aside the clerk's entry
4 of default (Doc. #18) is GRANTED. The clerk's entry of default entered on April 13, 2012,
5 (Doc. #13) is SET-ASIDE.

6 IT IS FURTHER ORDERED that defendant shall have thirty (30) days from entry of this
7 order to file an answer to the complaint or an appropriate motion as outlined by the Federal Rules
8 of Civil Procedure.

9 IT IS SO ORDERED.

10 DATED this 27th day of July, 2012.



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13 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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